

A STUDY OF EVOLUTION OF MAQÂSHID AS-SYARI'AH AS A LEGAL THEORY

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Abstrak: Studi Evaluatif terhadap Maqâshid as-Syarîah sebagai Teori Hukum. Artikel ini memberikan akun sejarah tentang teori *maqashid as-syari'ah* dengan tujuan untuk menunjukkan bagaimana teori tersebut berkembang. Akun sejarah ini sangat signifikan untuk mengapresiasi ijihad orang-orang hebat generasi pertama, yakni para sahabat yang telah mewujudkan dan menenamkan ide *maqashid as-syari'ah*. Di samping itu, muncul juga kontribusi yang disumbangkan oleh para ulama seperti al-Qaffâl, al-'Âmir, al-Juwaini, dan al-Ghazali yang mengembangkan teori tersebut yang kemudian disusul oleh as-Syatibi, Ibn Ashur, dll yang menstandarisasinya menjadi sebuah teori yang dipenuhi dengan prospek penelitian lapangan yang mandiri. Penelitian ini menyimpulkan bahwa pemahaman yang tepat tentang teori *maqashid as-syari'ah* tersebut sangat penting diterapkan terhadap konsep dan penerapan hukum Islam secara tepat. Fakta bahwa teori ini sangat dinamis dan mampu beradaptasi membuatnya mampu berevolusi dan berkembang. Oleh karena itu, tak terelakkan lagi bahwa teori *maqashid as-syari'ah* itu mampu beradaptasi dan merupakan hukum Islam yang relevan sepanjang waktu dan di semua tempat. Sebagian besar metode yang digunakan dalam penelitian ini adalah sejarah.

Kata kunci: *maqâshid as-syarîah*; teori hukum Islam.

Abstract: A Study of Evolution of Maqâshid as-Syarîah (objectives of Islamic Law) as Legal Theory. This paper gives a historical account of the theory of *maqashid as-syari'ah* with a view to showing how it actually evolved. This historical account is especially significant in order to appraise the efforts of those great individuals of the first generation (the Companions), who embodied and lived the idea of *maqashid as-syari'ah*. Also, it shall shed light on the contributions made by pioneer scholars (al-Qaffâl, al-'Âmir, al-Juwaynî, al-Ghazâlî) who developed the theory, and the later ones (Shâthibî, Ibn Ashur, etc.) who standardized it to become a full-fledged theory with prospects of becoming an independent field of study. The study concludes that proper understanding of the theory is crucial for the correct conception and application of Islamic law. The fact that the theory is characterized with dynamism and adaptability make it ever evolving and expanding. Thus it is an inevitable tool for ensuring the adaptability and relevance of Islamic law at all times and in all places. Expectedly, the method used in this research is largely historical.

Keywords: *maqâshid as-syarîah*; Islamic legal theory

Introduction

Maqasid as-syari'ah is an important Islamic legal theory which deals with the very objectives behind Lawgiver's various commands and prohibitions. It presupposes that realization of human benefits is the ultimate and overall objective which the Lawgiver seeks to achieve. Diverse as they may be, human benefits are categorized into three categories, namely necessity, need, and embellishment. The first category is given proper attention by jurists and authors across ages. This is because it category

entails five fundamental human benefits and interests (i.e. religion, life, intellect, progeny, and property) for the protection of which the Lawgiver has stipulated certain stiff penalties. The theory is an indispensable tool for proper understanding and application of Islamic law. Therefore, this paper studies the theory from historical perspectives. The idea is to dig deep into its origin and development with a view to see how it was conceived by the pioneer exponents and standardized by the later jurists to be a full-fledged legal theory assuming a unique status as far as Islamic law is concerned.

Origin and Development of *Maqâshid As-Syarî'ah*

A comprehensive history of *maqâshid as-syari'ah* can be traced to the first period of Islam when the message bearer (SAW) was alive. Legal injunctions contained in the Prophetic Traditions were fundamentally premised on the concept of *taysîr* (facilitating or making things easy), which is a necessary manifestation of *maqasid as-syari'ah*. This concept was well understood and internalized by the Companions of the Prophet (SAW), because of the fact that they lived at the time of revelation. Apart from witnessing substantial parts of revelation, their enquiries, in most cases, constituted reasons behind revelation; at times revelations would come down to the Prophet (SAW) in response to one or two issues consequent upon actions, inactions, reactions and interactions of the Companions among themselves. Their proximity to the message bearer both home and away, and during the periods of peace and of war was very crucial to their full awareness of the fact that the entire corpus of the *syari'ah* is purpose-oriented and that it is ultimately designed to ensure human benefit. In addition to this, they were well versed in Arabic language by instinct, which is the language of revelation. Added to the above factors is a host of personal attributes such as high level of intelligence, sincerity, honesty, and strong commitment to the cause of Islam which they all possessed.¹ In view of this, there is every reason to assume that all legal verdicts and judgments made by the companions were in line with the fundamental principles of *maqâshid as-syari'ah* the means of which *yusr* (ease) and *mashlahah* (human benefits) are achieved.

Instances are in abundance to show that the companions were practically curious to understand the objective of every ruling of the *syari'ah*. One telling instance has to do with the episode of afternoon prayer (*'ashr*) vis-à-vis Banû Quraizhah. The messenger of Allah dispatched a group of companions to the province of Banû Quraizhah and asked them not to observe the

afternoon prayer except when they have reached their destination. But, the time for *'ashr* prayer was due while they were on the way. This made the companions to be split into two divisions; the first one adhered to the literal meaning of the order given by the Prophet (SAW) and decided not to pray until when they have reached their destination, while the second division held the contrary opinion. The latter group had reasoned that since every prayer has its specific period, the period for *'ashr* prayer would have been over should they decide to delay it till after they reached their destination. They believed that the Prophet (SAW) could not have wished that prayer be delayed beyond its allotted time. As such, they understood that the underlying reason behind his order was to encourage them to hasten so that they could reach the destination before the allotted time of *'ashr* prayer and observe it there. Interestingly, when the story was narrated to him, the Prophet (SAW) approved of both positions as being correct each.²

From this episode it is clear that the second group based their decision on the underlying meaning of the prophetic order because of their general knowledge that nothing is more important than observing ritual prayers promptly. This consideration of underlying meaning of the prophetic order underscores the concept of *'illah* (*ratio decidendi*) which is intimately connected with the theory of *maqâshid as-syari'ah*.

Moreover, the second caliph, 'Umar was especially notable when it comes to basing verdicts on the underlying goal of *syari'ah*. His *fatâwâ* (i.e. legal verdicts) and policies were deeply informed by consideration of the spirit of *maqâshid as-syari'ah* with the purpose of advancing genuine human interest and welfare. One significant feature of his administration as the second caliph was his wide consultation with the leading companions on any major issue. This quality made it easy for him to introduce

¹ Yusuf Alim, *al-Maqâshid al-'Âmmah li al-Syari'ah al-Islâmiyyah*, (Herndon: International Institute of Islamic Thought,

² This hadith was narrated by both Bukhârî and Muslim: Mohammad al-Bukhârî, *al-Shahîh*, ed. Mustafa al-Bagha (Beirut: DâribnKathîr, 1986), vol. 1, p. 321; Abû al-Hussain Muslim Ibn al-Hajjâj, *Shahîh Muslim*, ed. Mohammad Fouad Abdul-Baqi (Beirut: DârIhyâ al-Turâth al-'Arabî, n.d), vol. 3, p. 1391; Auda,

people-oriented policies during his remarkable administration. His decisions on conquered lands, spoils of war, *hadd* (capital punishment), marriage of non-Muslim, distribution of Zakâh to new converts in order to endear Islam to their hearts, etc. are major highlights of his regime.³

It may be observed that Umar's decisions on the above issues and many others were premised on two significant principles namely *mashlahah* i.e. welfare of the community, and *sadd al-darî'ah* i.e. blocking the means to what might lead to unpalatable consequences. Following in the footsteps of the companions, the successors (*tâbi'ûn*) were also mindful of the spirit of the Syari'ah in giving legal verdicts. This was possible for them because they directly trained and graduated from the two famous schools of law at that time, namely, the school of *Hijâz (Madînah)* and that of *'Irâq*. The former, otherwise known as *madrasah al-hadîth* or *madrasah al-Madînah* [school of Tradition or *Madînah* school], had prominent companions like Zayd Ibn Thâbit and 'Abdullah Ibn 'Umar as authorities of Hadith, while the latter which is also known as *madrasah ahl al-Ra'y* [school of rationality], was headed by 'Abdullah Ibn Mas'ûd, another influential companion.⁴ Both schools produced a large number of authoritative scholars whose *fatâwâ* on different human endeavors were premised on the spirit of *maqâshid as-syari'ah*. There are many examples from each school to buttress this claim.⁵

³ Muhammad Baltaji, *Manhaj 'Umar ibn al-Khaththâb fî al-Tashrîf*, (Cairo: Dâr al-Salâm, 3rdedn., 1427/2006), pp. 114-115. The Caliph 'Umar's policy was generally based on the realization of general interests of the community. A case in point is his decision not to distribute conquered lands in Egypt and Iraq. And he justified this by referring to Q.59:7. He was particularly concerned about the incoming generation of the Ummah, who would be deprived of landed properties and other material benefits if the conquered lands were eventually distributed among the army. See also Yusuf al-Qaradawi *Madkhal li dirâsah al-Shari'ah al-Islâmiyyah*, (Beirut: Al-Risalah Publishing House, 2ndedn, 1417/1997), p. 59.

⁴ Muahmmad Zhâfir Kabbârah 'Abdul Fattâh, *al-Tashrîf al-Islâmî: ash'atuhu wa Târîkhuhu wa Mashâdiruhu*, (Beirut: Maktabah al-Rushd, 1stedn., 1424/2003), pp. 117-120.

⁵ Firstly, in Islamic law of evidence, attainment of age of puberty is a requirement for a testimony to be accepted. However, according to scholars from the *Hijâzi* School of law testimony made by an under-aged, while they are still at

Thus the companions and their successors embodied the spirit of *maqâshid as-syari'ah* and reflected same in their various legal verdicts. Though, it should be made clear that during those periods, terms related to the theory were yet to be developed or defined in technical sense. This nevertheless became possible only between the third through the sixth centuries of hijrah calendar. Notable scholars in these periods whose writings were connected with the theory include al-Tirmidhî al-Hâkim, Abû Zayd al-Balkhî (d. 322 /933), Abûbakar al-Qaffâl al-Shâshî (d. 350), Ibn Bâbawayh al-Qummî (d. 381/991), Al-'Âmirî al-Faylasûf (d. 381 /991), Abû al-Ma'âlî al-Juwaynî (d. 478 /1085), and Abû Hâmid al-Ghazâlî (d. 505 / 1111).

Al-Raysuni⁶ has regarded al-Hakîm al-Tirmidhî as one of the foremost scholars to employ the term *maqâshid* in his three works entitled: *'Ilal al-'Ubûdiyyah*, *Sharh al-Shalâh* and *al-Hajjwa Asrâruhu*. Inspired by his philosophical and mystical orientations, al-Tirmidhî explained underlining purposes of worship using experiential and figurative approaches.⁷

considered, in order to ensure the realization of *maqâshid al-Shari'ah* which is safeguard and protection of soul, one of the five necessary universals of the *shari'ah*. Secondly, scholars of Irâqi school of law were unanimous on the fact that capital punishment should not be carried out on a Muslim army while the battle was on. This was to avoid a prospect of decamping by the person so punished and his sympathizers, a situation that could disorganize the Muslim army. It has been related from *'Alqamah*, a prominent Irâqi scholar, that during a battle at the Roman land, in which another prominent scholar, *Hudhayfah* also participated, a man drank wine, and when he was about to be punished the latter stopped them from doing that for fear of losing the battle. In this case, the overriding interest (*mashlahah*) of the Muslim army was given a priority. Most likely, carrying out of the punishment in this situation might make them lose some physical and psychological strength to continue the battle and the opponents would capitalize on such lapses to defeat them. See al-Khalifah, al-Hasan Babiker, *Falsafah Maqâshid al-tashrîf fî al-Fiqh al-Islâmî*, (Cairo: Maktabat Wahbah, 1421 AH/2000 AD), pp. 32-34.

⁶ Al-Raysuni, *Imâm al-Shâthibî's Theory of the Higher Objectives*, pp. 5-7.

⁷ For instance, he gave an analytical explanation of the objectives of prayer thus "By the remembrance of God the heart is refreshed and softened, whereas by remembering one's passions and appetites it grows hard and dry. The heart may be likened to a tree which derives its moisture and suppleness from water: If it is too preoccupied with its appetites to remember God, it will appear as if it has been deprived of water. As a consequence, its roots dry up and its branches wither. If it is preoccupied with its passions and appetites

Abûbakr al-Qaffâl al-Shâshî (d. 356) of the Shâf'î school of law is another pioneer scholar who devoted his book *Mahâsin al-Syari'ah* to explaining virtues and purposes of the *syari'ah*. This book is considered as the oldest manuscript on the theory of *maqâshid as-syari'ah*.⁸ According to al-Raysuni, the significance of the work has been acknowledged by later scholars especially Ibn al-Qayyim.⁹ Though, this work does not provide epistemological and methodological framework for Islamic jurisprudence viz-a-viz *ushûl al-fiqh*. Its merit only lies in the explanation of the wisdom and purposes underlying specific rules of Islamic law in different areas, namely ritual, matrimonial, penal, and financial.¹⁰

Another pioneer scholar who has made a genuine contribution to the theory of *maqâshid* is Abû al-Hasan al-'Âmirî (d.381). A philosopher, his view on *maqâshid* was holistic and comprehensive. He discussed wisdom and virtues of worships in Islam in the sixth chapter of his book, namely, *al-i'lâm bi manâqib al-Islâm* which could be better classified as a reference book in the field of comparative study of religions. The main objective of highlighting such wisdom and virtues was to show Islam's unique position in relation to other religions.¹¹

One of the major contributions of al-'Âmirî

summer heat and its branches will become dry and brittle; if you draw one of its branches toward you, it will fail to bend and, instead, break off. Such a tree is good for nothing but to be cut down and used to fuel fire. In the like manner, the heart will grow dry and brittle if it lacks the remembrance of God: It will be afflicted by the heat of the soul and pleasures of the appetites, as a result of which one's bodily members will be too brittle to bend to God's will and will cease obeying Him. If you bend them they will break, and will be good for nothing but to become tinder for the Great Fire. See Al-Hakîm al-Tirmidhî, *al-ShalâhwaMaqâshiduha*, ed. Husni Nasr Zaydan, (Cairo: Dâr al-Kitâb al-'Arabî bi Mishr, n.d.), pp.9-10 as quoted in al-Raysuni, *Imâm al-Shâthibi's Theory of the Higher Objectives*, pp. 5-6.

⁸ It is said to be available in Dâr al-Kutub publishing house in Egypt. See Auda, *Maqasid al-Shariah as Philosophy of law*, p. 14.

⁹ Al-Raysuni, *Imâm al-Shâthibi's Theory of the Higher Objectives*, p. 8.

¹⁰ Mohamad El-Tahir El-Mesawi, "From al-Shâthibi's Legal Hermeneutics to Thematic Exegesis", *Intellectual Discourse* vol.20, no. 2, (2012): p. 192.

¹¹ Ahmad Al-Raysuni, "al-Bahth fî Maqâshid al-Sharî'ah: Nash'atuh wa tathawwuruh wa mustaqbaluhu", A paper presented at the seminar on Maqâshid al-Sharî'ah, organized by al-Furqan Islamic Heritage Foundation in London, between

to the theory of *maqâshid* is in his classification of *maqâshid* into five categories, a taxonomy that was later refined and developed by al-Juwaynî and al-Ghazâlî.¹² In addition, he was also unprecedented in linking the prescribed punishments to the five necessary objectives considering them as *mazjarah* (i.e. protective and deterrent measures). It is through these measures that the *syari'ah* aims to protect individuals against violations and abuse with respect to their life for which retaliation (*qishâsh*) has been sanctioned; their property in which case amputation and crucifixion has been provided; their privacy against which lashing and stoning have been prescribed; their dignity against which lashing with *tafsîq* (to regard someone immoral, ungodly for committing illicit act) has been put in place; and their faith in which case execution is sanctioned.¹³

The above categorization by al-'Âmirî, it must be noted, was devoid of protection of intellect. In its place dignity was considered as one of five indispensable things that the *syari'ah* seeks to protect. As shall be seen later, protection of intellect was added by al-Juwaynî who outstandingly participated in the improvement process of al-'Âmirî's five-fold classification of *maqâshid as-syari'ah*. Also, the term *mazjarah* which was used by al-'Âmirî to indicate the protection of those five things was replaced with the term *'ishmah* by al-Juwaynî, before the latter term was later supplanted by *hifz* by al-Ghazâlî.

Nonetheless, with the exception of al-'Âmirî, the importance of the pioneer works of *maqasid as-syari'ah* should be appreciated not as materials that are concerned with epistemological and methodological expositions of the theory. They do not constitute indispensable works that must be consulted for better understanding of the theory of *maqâshid as-syari'ah* in terms of definition, classification and methods of identification of the theory. Rather, their contributions should be seen as an antecedent necessary for eventual evolution and development of the theory of *maqâshid* in the hands of later scholars. So, the purpose of

¹² Details on the taxonomy shall be discussed soon when highlighting the contributions of both scholars.

highlighting these pioneer works is just to show and appreciate the fact that Muslim scholars in the past were ever conscious of inner meanings and underlining purposes of different aspects of worship and indeed the ultimate objective of the *syari'ah*. To this extent, these pioneer scholars especially, al-Shâshî and al-Âmirî could thus be considered as the trailblazers of *maqâshid as-syari'ah*.¹⁴

However, the theory of *maqâshid as-syari'ah* as is presently known actually started manifesting in the hands of Imâm al-Juwaynî. This famous teacher of al-Ghazâlî occupied a lofty position in the process of development of the theory. To be sure, he can be rightly regarded as the architect of the three categories of *maqâshid as-syari'ah*, namely *dharûriyyah*, *hâjiyyah* and *tahsînîyyah*.¹⁵ The wide adoption and acceptance of this categorization by subsequent important scholars i.e. his disciple, al-Ghazâlî, al-Râzî, al-Âmidî, al-Qarâfî, al-Shâhibî, and IbnAshur in the modern period, speaks volume about his eminent position regarding the development of the theory. His awareness and conviction that the entire corpus of the *syari'ah* is purpose-oriented informed his explanation of the rationale behind the soil ablution i.e. *tayammum*. In addition to this, his refutation of the school of al-Ka'bî for the latter rejection of the legal category of *Mubah* (permissible) is equally instructive, when he remarked in his book: *al-Burhân* that:¹⁶

Whosoever is unaware that there are objectives behind commands and prohibitions (of the *syari'ah*) such person is not cognizant of the *syari'ah*.¹⁷

Specifically, the invention of the three categories of *maqâshid as-syari'ah* took place while al-Juwaynî was differentiating between the legal rulings that are premised on clear underlying bases (*'illah*) and those that are not so based. This

juristic exercise eventually led him to arriving at five-fold division which were later pruned to three categories (*dharûriyyah*, *hâjiyyah* and *tahsînîyyah*). These five divisions are: one, those legal bases that have to do with 'the essentials', namely law of retribution that has been sanctioned in order to protect innocent soul against unjust execution; two, those which concern human needs with lesser importance than the first division, e.g. transactions among individuals; three, those which fall between 'the essentials' and 'the needs', e.g. ritual purity; four, those which are closely related to the third division, albeit with less importance, e.g. recommended actions; five, those whose objectives are not intelligible. This last division according to al-Juwaynî is neither practical nor thinkable. Because virtually all Islamic legal rulings, including those pertaining to acts of worship, are intelligible and captured in the grand objective, which is realization of benefit and repulsion of harm.¹⁸

It should be interesting to note how these five categories were later reduced to three famous categories. Having itemized the five categories, Imâm al-Juwaynî did suggest that the third and fourth divisions should be merged together to form the third category, namely *tahsînîyyah*. Perhaps, this is due to the fact that the definitions given as regards both divisions are not so different. Not only this, the fifth division could as well be subsumed under any of the three divisions (i.e. *dharûriyyah*, *hâjiyyah* and *tahsînîyyah*) because it was later sub-divided into what can be rationalized and what cannot be, in which case, it eventually belongs to one of the three categories mentioned above.¹⁹

Another major contribution of al-Juwaynî to the theory is his allusion to what are regarded as the five major necessary universals in Islamic Law which come under the category of *dharûriyyah*. These include: religion, human life, the faculty of reason, progeny, and property. In this connection he stated thus:

¹⁴ El-Mesawi, "From al-Shâhibî's Legal Hermeneutics to Thematic Exegesis", p. 192.

¹⁵ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Kuala Lumpur: Ilmiah Publishers, 2000), p. 401.

¹⁶ Isma'il al-Hasani, *Nazhriyyat al-Maqâshid' inda al-Imâm Muhammad al-Tahir ibn 'Ashur*, (Herndon: International Institute of Islamic Thought, 1stedn., 1415/1995), p. 41; al-Raysuni, "al-Baht fî Maqâshid al-Shari'ah" p. 13.

¹⁸ Al-Juwaynî, *al-Burhân...*, vol.2, pp. 923-947; al-Hasani, *Nazhriyyat al-Maqâshid' inda al-Imâm Muhammad al-Tâhir bin 'Ashûr*, pp. 42-43; al-Raysuni, *Nazariyyat al-Maqâshid' inda al-Imâm al-Shâhibî*, p. 14.

Islamic Law is comprised of that which is commanded, that which is prohibited and that which is permitted. That which is commanded includes, for the most part, acts of worship. As for those acts which are prohibited, the Law has laid down deterrents for the most serious of them. Generally speaking, human life is preserved through the law of retribution, chastity is preserved through the punishments laid down [for related transgressions], and people's possessions are protected from thieves by cutting off [their hands]²⁰

As a matter of fact, al-Juwaynî's contribution to the development of the theory of *maqâshid as-syari'ah* goes beyond the above inventions of the three categories of *maqâshid as-syari'ah* and the five necessary universals which come under the first category, i.e. *dharûriyyah*. His concrete contribution is personified by his illustrious disciple, al-Ghazâlî, who continued where his teacher stopped and developed his earlier ideas. Yet, al-Ghazâlî is far from being a mere imitator or a passive interpreter of his teacher's ideas on the theory. In fact, his outstanding contribution to the theory has earned him fame and distinction over and above that of his teacher who admittedly had exerted a huge influence on him.²¹ As observed by Nyazee, al-Ghazâlî's effort in this regard "was to knit, in his organized and systematic manner, most of al-Juwaynî's ideas into a comprehensive theory. He also changed and refined the terminology used by al-Juwaynî. A theory that appeared ordinary in al-Juwaynî's work suddenly became alive in al-Ghazâlî's hand".²²

Accordingly, in his works, namely, *shifâ'* and *al-mustashfâ'*, al-Ghazâlî discussed very extensively the concepts of *mashlahah* (public interest) and *ta'lîl* (ratiocination) which are the two indispensable conceptual foundations of the theory of *maqâshid as-syari'ah*. His acceptance of the concept of *mashlahah* as a source or proof, is however conditional though. To him, for the concept to be valid, it must be seen to actually

promote human good.²³

Furthermore, al-Ghazâlî was so convinced of the primacy of the necessary universals earlier propounded by his teacher that he boldly asserted that the promotion of those five things [religion, life, intellect, progeny and property] is sacrosanct in all known belief systems and laws. This clear-cut declaration has been widely regarded by many writers as one of the new improvements on the theory of *maqâshid as-syari'ah* that have been made by al-Ghazâlî. Even though, it must be pointed out, there was an earlier hint on this claim by al-'Âmirî while trying to enumerate the five-fold classification of *maqâshid as-syari'ah*:

As for preventive and deterrent measures, their orbit in the six religions also should not exceed these five things.²⁴

After the periods of al-Juwaynî and al-Ghazâlî and before that of al-Shâhibî there appears to be no significant contribution to the theory of *maqâshid*. It is believed that most of the scholars who wrote on the theory afterwards contented themselves with repeating, elaborating and expatiating on what both scholars had said of the theory.²⁵ Yet, there are few scholars that prove exceptional. For instance, al-Âmidî (d. 631) was noted for his vehement defense of limitation of *dharûriyyah* to those five things, namely religion, life, intellect, progeny and property. As a matter of fact, he argued that proper awareness and understanding of realities of life would lead to knowledge and even support the fact that human welfare can only be realized through the protection of religion, life, intellect, progeny and property. In the words of Bernard Weiss, al-Âmidî's argument seemed to be that 'when we examine the world as constituted by God empirically and inductively we discover at the end of our investigation that these five necessities and these alone are fundamental to everything else'.²⁶ Based on this line of reasoning, beside

²³ Kamali, *Principles of Islamic Jurisprudence...*, p. 401.

²⁴ See al-Raysuni, "*al-Bahthfimaqâshid al-Shari'ah*"..., p. 20.

²⁵ al-Raysuni, "*al-Bahthfimaqâshid al-Shari'ah*"..., p. 20.

²⁶ Bernard Weiss, "The Intention of the Law (Maqâshid al-Shari'a) In Amidi's Jurisprudence", Conference Proceeding of the international conference with the theme: "Maqâshid al-Shari'ah and Its Realization in Contemporary Societies", organized by Department of Fiqh and Islamic Studies, Faculty of Islamic Studies, IAIN Sunan Gunung Jati Cirebon, 2010.

²⁰ Al-Juwaynî, *al-Burhân...*, vol. 2, p. 1151; al-Raysuni, p. 16.

²¹ See Ibid. al-Raysuni, p. 12; al-Na'im & Sharif, *Maqâshid al-Shari'ah al-Islamiyyah*, p. 48.

those five universal values, other human concerns are ultimately lesser in importance.

Apart from his defense of limiting the necessary universals of the *syari'ah* to five things, al-Âmidî also has been credited with the notion of prioritizing those universal values in the event of possible conflict. According to him, the first category i.e. *dharûriyyât* should take precedence over the second i.e. *hâjjiyyât* and the third i.e. *tahsîniyyât* respectively, while the former supersedes the latter. Perhaps for the first time, al-Âmidî adduced reasons why the preservation of progeny and human life should be given priority over the preservation of intellect. He believed that for intellect to exist and function properly, it necessarily depends on the preservation of progeny and human life. What more, al-Âmidî strongly opposed the tendency to give priority to human life at the expense of religion.²⁷

Among other scholars whose contributions to the theory of *maqâshid as-syari'ah* are somewhat significant is al-Qarâfî (d. 685 AH). He was said to have purportedly added *'irdh* i.e. dignity, as the sixth necessary universal that the *syari'ah* aims to protect and preserve.²⁸ Though, this addition provokes controversy among scholars. Some scholars²⁹ have accepted and supported this addition of *'irdh* mainly because like other universal values, punitive punishment has been stipulated for violation of dignity. But others³⁰ have rejected it on the basis that there is no correlation whatsoever between the prescription of punishment and that which is a *syari'ah* necessary universal. They further argued that dignity is less important than religion, life, intellect, progeny, and property. Unlike these five necessary universals, violation of dignity cannot

lead to a total annihilation and destruction of human existence. Perchance dignity, it is argued, could be put under *hâjjiyyât*, the second category after *dharûriyyât*, and not under the first category, i.e. *dharûriyyah*.

With the exception of Ibn Taymiyyah (d.728 AH), the contribution of other scholars like his disciple, Ibn al-Qayyim (d.751 AH) among others, is no more than brilliant articulation of earlier ideas as regards the centrality of *maqâshid as-syari'ah* in Islamic legal thought. They sought to provide sophisticated arguments and evidences in support of the fact that, the *syari'ah*'s purpose-oriented and that the Lawgiver does not merely command or forbid but for a wise reason. And that the main objective behind every rule of the *syari'ah* is to realize human benefit both in this world and the next. But as earlier alluded to, Ibn Taymiyyah caught the attention of scholars of the theory with his firm opposition to the idea of limiting the objectives of the *syari'ah* to a particular number. His peculiar understanding of the theory coupled with his rejection of the idea of limiting the necessary universals to five made him come up with a long list of new objectives of the *syari'ah*. Most of these new objectives have to do with inner dimensions of worship as well as some ethico-social human aspects.³¹

Moreover, the eighth century of *hijrah* calendar witnessed a landmark development in the theory of *maqâshid as-syari'ah*. Popularly known as al-Shâthibî, Abû Ishâq (d.790 AH) “stands as the foremost scholar who has given this idea it’s most comprehensive and elaborate theoretical and methodological formulation”.³² With his very important work which he titled, *al-Muwâfaqât*, al-Shâthibî’s contribution to the development of the theory of *maqâshidas-syari'ah* in particular and the field of *ushûl al-fiqh* in general, is both revolutionary and innovative. This is because he spearheaded a radical departure from dominant blind imitation and narrow discussion of the field

International Institute of Muslim Unity, International Islamic University Malaysia, 14-16, Rajab, 1427/ 8-10, August 2006, Vol. 3 (English & Malay Papers), p. 128.

²⁷ Al-Hasani, *Nazariyyat al-maqâshid'inda al-Imâm Muhammad al-Tahir IbnAshur*, p. 50; al-Raysuni, *Imam al-Shatibi's Theory of the Higher Objectives*, pp. 22-23.

²⁸ Al-Qarâfî, *SharhTanqîh al-Fushûlfiikhtishâr al-Mahshûl*, (Cairo: Dâr al-Fikr, 1stedn., 1393/1973), p. 391.

²⁹ Like Qaradawi, see Al-Qaradawi, *Dirâsah fî maqâshid al-shari'ah.*, p. 28; al-Qaradawi, *Madkhal li Dirâsah al-Shari'ah al-Islâmiyyah*, pp. 55-56.

³⁰ Like IbnAshur, IbnAshur, *Maqâshid al-Shari'ah al-*

³¹ IbnTaymiyyah, *Majmu'Fatâwâ*, vol. 32, p. 234; Badawi, *Maqâshid al-Shari'ah' inda Ibn Taymiyyah*, p. 251; al-Raysuni, *al-Kulliyât al-Asâsiyyah*, pp. 85-86; al-Na'im& Sharif, *Maqâshid al-Shari'ah al-Islâmiyyah*, pp. 49-50.

³² El-Mesawi, “Maqâshid al-Shari'ah And human Socio-

of *ushûl al-fiqh* to a more creative and broader discussion. In his views, adequate understanding of *maqâshid*, alongside Arabic language, is an indispensable requirement for proper and correct *ijtihâd*. By implication, this is a fundamental improvement on the status and role of the theory of *maqâshid as-syari'ah*, in the process of derivation of legal rules from the sources of the *syari'ah*. Before al-Shâthibî, the theory of *maqâshidas-syari'ah* was not given proper role in the process of *ijtihâd*. Hence, his outstanding contribution to the remarkable development of the theory has come to be widely acknowledged by scholars and students of Islamic legal theory. It is therefore not an exaggeration to say that al-Shâthibî is to the theory of *maqâshid as-syari'ah* what al-Shâfi'î is to the science of *ushûl al-fiqh*.³³

Nonetheless, al-Shâthibî's developmental efforts as regards the theory did not evolve from a vacuum. His ideas were rather based on basic propositions earlier advanced by past scholars like al-Ghazâlî and his teacher, al-Juwaynî. To him, and like those before him, the existential purpose of the *syari'ah* is encapsulated in the protection and promotion of the three legal categories, namely *dharûriyyât*, *hâjiyyât* and *tahsîniyyât*.³⁴ He also adopted the famous five necessary universals, namely protection of religion, life, intellect, progeny, and property. And just like al-Ghazâlî, he openly declared that those universal values are indispensable in all divinely revealed religions and laws. In addition, his indebtedness to those before him is noticeable in his copious reference to the works of al-Ghazâlî to support his arguments.³⁵ With this in mind, we cannot but wonder and ask: what then makes al-Shâthibî's contribution to the theory *maqâshid as-syari'ah* unique and widely celebrated? Why then is he often referred to as the reformer or at times as the originator and champion of the theory of *maqâshid as-syari'ah*, when it is well established that he was indebted to earlier scholars?

In his introductory note to *al-muwâfaqât*, Abdullah Draz, the famous editor of the book, gave an insight into new things in the work of al-Shâthibî. As earlier observed, al-Shâthibî emphasized the fact that understanding of the *syari'ah* should be premised on two things namely, knowledge of Arabic language and acquaintance with the aims and objectives of the *syari'ah*. The entire literatures on *ushûl al-fiqh*, before him, were exclusively devoted to the former, while the latter part was apparently neglected, despite its great importance. Hence al-Shâthibî took it upon himself the task of filling this great vacuum with his *al-muwâfaqât*.³⁶

In addition, it should be added that, as a monumental work in the field of *ushûl al-fiqh*, Shâthibî's *muwâfaqât* has enjoyed a considerable appreciation of those concerned about the theory of *maqâshid*; few names may be mentioned of notable scholars like Andalusian scholar al-Hafîd Ibn Marzûq (842 AD/1438 AH), Ahmad Bâbâ (1036 AD/1626 AH), Muhammad Makhîluf (d. 1941 AD), Shaykh'Abdullah Draz (d. 1958), and Abu Zuhrah (d. 1974). The last of these eminent scholars made the following statement about the book:

Abû Ishaq Ibrâhîm b. Mûsâ al-Shâthibî (d. 780 AH), a Mâlikî jurist, carried all the burden and fulfilled this heavy task, or almost did it, in his book *al-muwâfaqât*. He explained the objectives of Islamic law clearly, and linked them with the rules expounded by the theorists. He discussed the sources of law in the light of these objectives and ends. Thus, he broke the new grounds in jurisprudence and that is the road that must be followed from now on.³⁷

Though despite its apparent importance, the book was not spared from some form of neglect for a considerable period of time. According to Abdullah Draz, the book suffered such kind of neglect probably due to two reasons. Firstly, as at the time when al-Shâthibî wrote the book in the eighth century, many books on the field of *ushûl al-fiqh* had been in vogue with wide acceptance among scholars. During this time, there was

³³ Al-Hasani, *Nazariyyat al-Maqâshid 'inda al-Imâm Muhammad al-Tahir IbnAshur*, pp. 65-66.

³⁴ Wael B. Hallaq, *A History of Islamic Legal Theories*, (New York: Cambridge University Press, 1997), p. 168.

³⁵ See al-Raysuni, *Imam al-Shatibi's Theory of the Higher*

³⁶ Al-Shâthibî, *al-Muwâfaqât*, vol. 1, pp. 5-6.

³⁷ MuhammadAbu Zahra, *Al-Shâfi'î*, (Cairo: Dâr al-Fikr al-'Arabî, 1978), p. 273; Masud, *Shâthibî's Philosophy of Islamic*

a dominant mentality that the field had been exhaustively studied, so much that any new work could best be considered as subordinate to and ultimately less important than the existing ones. For this reason, Draz assumed that the book was not deemed worthy of reading, because nothing new was anticipated in the field of *ushûl al-fiqh*. Secondly, the neglect might not be unconnected with high level of Shâthibî's style of writing. His expression was so sophisticated and advanced that the proper understanding of the book requires mastery of several branches of knowledge, namely the Prophetic Tradition, science of exegesis, theology, as well as the classical style of writing employed by foremost scholars, and that of *sûfî* scholars.³⁸

However, the book was to gain a wider acceptance and appreciation in the modern period. Modern reformers like Muhammad'Abduh discovered its potentiality as a work loaded with reform ideas. This was why he advised his disciples to study and edit the book in order to ensure its wider readership among scholars and students of the *syari'ah*. 'Abdullah Draz was one among those of his disciples who took up the challenge of studying and editing the book.³⁹

Consequent upon the above factor, many works on *maqâshid* generally and al-Shâthibî particularly have been produced. Ibn Ashur whose contribution shall be considered shortly is probably the most innovative and creative of all modern writers who have written on the theory *maqâshid as-syari'ah*. In the same vein, for his detailed work on al-Shâthibî, al-Raysuni is another outstanding modern writer on the theory. In this work, al-Raysuni summarized al-Shâthibî's novel contributions to the theory as follows:

Firstly, unlike his predecessors, al-Shâthibî treated the theory of *maqâshid as-syari'ah* independently; this occupies the largest section in his book; *al-muwâfaqât*. With this, the theory became a visible, recognizable entity; no longer could it be disregarded, undermined or belittled.

Secondly, for the first time in the study of *maqâshid as-syari'ah*, al-Shâthibî considered and

discussed human objectives as the second side of the coin of the whole theory. This integrative approach to the theory is considered crucial to the understanding and realization of divine objectives, mainly because it is through the agency of human being that those objectives are expected to be realized via his actions, transactions and behaviors.

Thirdly, while all previous scholars did unanimously agree on the genuineness of the theory, there was little or no concern on their part as to how those objectives can be unraveled. It was al-Shâthibî who first explored this area and came forth with methods of identifying the objectives of the *syari'ah*.

Fourthly, in any field of study, comprehensive rules and principles are required as a foundation upon which such a field may be firmly based and by which it can be regulated. So, particulars and theories thereof become properly arranged. This is why al-Shâthibî endeavored to lay down some general principles with a view to regulating various theories and particulars germane to the theory of *maqâshid as-syari'ah*.⁴⁰

Highlight on Shâthibî's unique contributions to *maqâshid as-syari'ah* will be incomplete without talking about the inductive method (*al-manhaj al-istiqrâî*) which he employed in a systematic and unique manner as a methodological tool to ground his new ideas on the theory of *maqâshid as-syari'ah*. This inductive method presupposes "an exhaustive thematic survey and analysis of the *syari'ah* sources in order to establish universal principles or simply *syari'ah* universals".⁴¹ For "the epistemic foundations of his theory turn out to be anchored not in any multiply transmitted report of Quranic verse, but rather in comprehensive inductive surveys of all relevant evidence, be it textual or otherwise. Because "When a large or sufficient number of pieces of evidence converge to confirm an idea, notion, or principle, the knowledge of that idea or principle becomes engendered in the mind with certainty because the confluence of the evidence has the effect

³⁸ Al-Shâthibî, *al-Muwâfaqât...*, vol. 1, pp. 11-12.

⁴⁰ Al-Raysuni, *Imam al-Shâthibî's Theory of the Higher Objectives ...*, pp. 311-323.

⁴¹ El-Mesawi, "From al-Shâthibî's Legal Hermeneutics to

of a virtually complete, if not perfect, inductive corroboration”.⁴²

In principle, “the particular (*juz’i*) rules of the *syari’ah* are governed by universal laws (*qawânîn kulliyah*). These laws could be known by a comprehensive survey of the *syari’ah* discourse. By resorting to the procedure of complete induction (*istiqrâ’kullî*), one can move from the particular rules to the universal laws of the *syari’ah*”.⁴³ “To put it differently, a group of verses in the Qur’ân may all have, in common, one theme which happens to be subsidiary to the main meaning in each verse. The inductive corroboration of one verse by the others lends the common theme more credence and authority which could reach the degree of certitude”.⁴⁴

While it is true that scholars in the past had used the inductive method, it is beyond doubt that al-Shâthibî succeeded in using the method in a very unique manner as he used it to derive the general principles of the *syari’ah* as well as its objectives.⁴⁵ In addition to this, al-Shâthibî integrated both inductive and deductive reasoning making both a unified methodology.⁴⁶ Though, the concept of thematic induction (*al-istiqrâ’ al-ma’nawî*) as employed by al-Shâthibî is an extension of *al-tawâtur al-ma’nawî*, a principle peculiar to the science of the Hadîth. However, he did not restrict the application of the principle to the Prophetic reports; instead, he employed it to derive a set of principles of universal validity from the authentic sources of the *syari’ah*. To this extent, he went beyond his predecessors in developing a legal theory of induction.⁴⁷ Accordingly, it is on the basis

of inductive corroboration that al-Shâthibî was able to establish the validity of the five universals (religion, life, intellect, progeny, and property). For, these values “are advocated by the *syari’ah* in no uncertain terms, terms that are individually probable, but in their multitude, they corroborate and affirm the validity of these principles beyond any doubt”.⁴⁸

While the inductive method was used in a narrow way before al-Shâthibî, he seemed to have used it in a comprehensive manner. For him, it so appears, the inductive method whether perfect (*istiqrâ’tâmm*) or imperfect (*istiqrâ’nâqish*), should ultimately yield conclusiveness and certainty. This line of argument runs contrary to the position of many logicians and philosophers like Aristotle who had upheld that the imperfect inductive method should not enjoy certainty like the perfect one.⁴⁹ Though al-Shâthibî had claimed that his legal presuppositions, namely that the human benefits (*dharûriyyah*, *hâjiyyah*, and *tahsîniyyah*), have been established through the means of perfect induction method. In the same vein, he claimed that the five universal values are known to be preserved in every nation. But this claim has been discredited on a number of logical grounds. First, al-Shâthibî himself had been quoted to have implicitly affirmed that his presuppositions shall be based on the imperfect induction. This is in view of the fact that “the process of causation does exist in a limitless number of rules in both Qur’ân and Sunnah”.⁵⁰ What this implies is that it is impossible to survey all legal dispositions to arrive at a clear-cut universal. Soualhi has argued that al-Shâthibî’s induction in grounding the aforementioned legal presuppositions is imperfect mainly because his claim that the five values are protected in every religion is contestable. He contended that this generalization must have been based on sound historical facts which al-Shâthibî could not have claimed to possess.⁵¹

⁴² Hallaq, *A History of Islamic Legal Theories*, pp. 165-166.

⁴³ Louay Safi, *The Foundation of Knowledge: A Comparative Study in Islamic and Western Methods of Inquiry*, (Petaling Jaya: International Islamic University Malaysia & International Institute of Islamic Thought, 1996), p. 91.

⁴⁴ Wael. B. Hallaq, “The Primacy of the Qur’ân in Shâthibî’s Legal Theory” in *Islamic Studies Presented to Charles J. Adams*, edited by W.B. Hallaq and D.P. Little, (Leiden, 1991), p. 83.

⁴⁵ Al-Fasi, *Maqâshid al-Shari’ah al-Islâmiyyah wa Makârimuhâ*, p. 51; Yunus Soualhi, “al-Istiqrâ’ fî Manâhij al-Nazhar al-Islâm: Numûzaj al-Muwâfaqât li al-Imâm al-Shâthibî” *Islâmiyyah al-Ma’rifah*, vol. 1, no. 4, (1416/1996): p. 80.

⁴⁶ Soualhi, *al-Istiqrâ’ fî Manâhij al-Nazhar al-Islâmî...*, pp. 91-92.

⁴⁷ Wael. B. Hallaq, “On Inductive Corroboration, Probability and Certainty in Sunnî Legal Thought”, in *Islamic Law and Jurisprudence*, edited by N.L. Heer, (Seattle and London, 1990),

⁴⁸ Wael. B. Hallaq, “On Inductive Corroboration...”, pp.25-26.

⁴⁹ Al-Shâthibî, *al-Muwâfaqât*, vol.1, p.36; Soualhi, “al-Istiqrâ’ fî Manâhij al-Nazhar al-Islâm”, p.60 and W.L., Resse: *Dictionary of Philosophy and Religion* (New Jersey: Humanities Press, 1983), p.25 cited in Soualhi, p.60.

⁵⁰ Al-Shâthibî, *al-Muwâfaqât* ..., vol. 2, p. 7.

⁵¹ Yunus, Soualhi, “Al-Imam al-Shâthibî’s Induction: From

Similarly, Djeghim observed that the limitation of all *mashâlih* (benefits) to the three categories is quite impossible based on the perfect inductive method. However, this could only be possible with the imperfect method.⁵² This shows that al-Shâthibî's conception of the method of induction makes little or no difference between the perfect and imperfect types. To him, both should lead to certain and conclusive legal presuppositions.

Furthermore, to al-Shatibi, the whole system of inductive method is actually based on the relation between *kulliyah* (universal) and *juz'iyah* (particular). A universal principle is made of limitless number of particulars. Al-Shâthibî asserted that both *kulliyah* and *juz'iyah* should work together in a harmonious way. According to him, "it is extremely impossible for the *juz'iyah* to be independent from their *kulliyah*. For instance, whoever takes a *nashsh* (text) in a certain *juz'i* without taking into consideration its *kullî*, he is definitely wrong. Similarly, whoever considers the *kullî* without considering its *juz'i*, he is wrong".⁵³ Though each particular that forms a given universal is probable at individual level, the universal principle thus formed assumes a conclusive and certain status. It is irrelevant if one particular contradicts the universal principle, because this contradiction is not sufficient as to form another contradictory universal. Thus the contravening particulars shall be disregarded.⁵⁴

Such is the remarkable contribution to the theory of Maqasid by Imam al-Shatibi. Interestingly, his ideas have inspired scholars in the modern time, one of whom is Ibn Ashur (d.1973). As earlier noted, for many centuries al-Shâthibî's novel contributions to the theory of maqasid went almost totally unnoticed until modern times. In other words, no major works were produced that made any significant additions to the ideas and methodology he formulated regarding the conceptualization and study of the theory. Only towards the middle of the twentieth

century did Ibn Ashur take up the matter in his seminal work *Maqâshid as-syari'ah al-Islâmiyyah*. Ibn Ashur's approach and efforts in this regard could be likened to those of al-Shâthibî himself in the sense that both avoided blind imitation of their predecessors. This independent attitude explains why their thoughts and ideas on the theory appear distinct and original. "Realizing the importance of the idea of *maqâshid*, al-Shâthibî (d.1388) labored to reconstruct the whole of *ushûl al-fiqh* around the *maqâshid*, thus making them the unifying theme of the issues and topics usually dealt with almost independently of one another by *ushûl* works. With him the *maqâshid* became the axis of *ushûl al-fiqh*. Ibn Ashur, on the other hand, sought to reformulate the *maqâshid* not only as a doctrine in Islamic jurisprudence and central theme in *ushûl al-fiqh*, but as an independent discipline".⁵⁵

Ibn Ashur made it clear *abi initio* that while he benefited from the work of al-Shâthibî, he was not out to simply repeat or abridge the latter's view. Rather, his concern was to highlight the *syari'ah's* intents regarding the laws and rules governing civil transactions (*mu'âmalât*) and refined manners (*âdâb*) to which Islam has paid great attention in specifying and identifying the various levels of benefit (*mashlahah*) and harm (*mafsadah*) and the criteria for assessing them. This feature according to him shows Islamic law's superiority over all positive laws and social policies, with regard to the preservation of the universe and reform of society.⁵⁶ By implication, Ibn Ashur's major goal was to develop the theory of *maqâshid as-syari'ah* into a discipline independent of *ushûl al-fiqh*.

It is however pertinent to note that Ibn Ashur sought to explore the theory with a view to making it an epistemic framework that would

International Islamic University Malaysia, 1994), pp. 55-58; Soualhi, "al-Istiqrâ'fîManâhij al-Nazar al-Islâmî", p. 77.

⁵² Djeghim, *Thuruq al-Kashf...*, p. 268.

⁵³ Soualhi, "Al-Imam al-Shâthibî's Induction"..., p. 85.

⁵⁴ Soualhi, "al-Istiqrâ'fîManâhij al-Nazar al-Islâmî", p. 79;

⁵⁵ Mohamed El-Tahir El-Mesawi, "Maqâshid al-Shârî'ah: An Ushûlî Doctrine or Independent Discipline A Study of Ibn'Âshûr's Project", Proceedings of the International Conference on "Maqâshid al-Shârî'ah And Its Realization In Contemporary Societies", organized by Department. of Fiqh and Ushûl al-Fiqh in Collaboration with International Institute of Muslim Unity, International Islamic University Malaysia, 14-16, Rajab, 1427/ 8-10, August 2006, vol. 3, (English & Malay Papers), p. 68.

⁵⁶ Ibn Ashur, *Maqâshid al-Shârî'ah al-Islâmiyyah*, pp.174-

enable scholars to attain certainty and consensus on matters of juristic difference.⁵⁷ For him, this was necessary in view of insufficiency of *ushûl al-fiqh* and its lacking of definitive proofs. According to Ibn Ashur, the mere presence of disputed issues among different scholars as regards legal rules is enough to disprove some classical scholars' assertion that the field of *ushûl al-fiqh* entirely embodies definitive proofs.⁵⁸ Obviously, the main reason for this conflict of opinions is a historical one, namely the fact that jurisprudence was developed three centuries before *ushûl al-fiqh*. Ibn Ashur observed that except for al-Shâthibî, no scholar ever took it upon himself to articulate and expound the objectives of the *syari'ah* in a focused and systematic manner. According to him, even al-Shâthibî's book is not immune from unnecessary digression and mixture.⁵⁹

Importantly, Ibn Ashur's ideas on *maqâshid* were profoundly predicated on the concept of *fithrah* i.e. human nature or innate disposition in every human being which, in its original form, always inclines towards total submission to God, the Creator. According to this concept, man is by nature a believer in the Creator and to that extent Islam and its law is in tandem with *fithrah*. The Islamic law through its various injunctions is therefore meant to restore human nature back to its pristine and undiluted state of purity, thereby riding man of corrupting elements which tend to defile his pure nature. In Ibn Ashur's view, this concept of *fithrah* is intimately connected with a primordial covenant between the Creator and man, in which the latter attested to and affirmed the supremacy of the former as Lord worthy of worship and obedience. This implies a trust which humankind among all creatures, had accepted to bear responsibly.⁶⁰ According to this viewpoint, restoration of human pristine nature is of higher objective of the *shari'ah*.

There is no gainsaying that, Ibn Ashur was a pioneer among modern Muslim scholars in the systematic study of *maqâshid as-syari'ah* as

a distinct subject and not merely as a subsidiary of *ushûl al-fiqh*. His contribution in this respect has been widely appreciated and studied by a large number of students and scholars. Apart from the independence of the theory which he audaciously proposed, the major highlights of his contribution to the theory may be outlined as follows:-

First, to the traditional division of the theory into general and specific, Ibn Ashur added the third type which primarily has to do with the most specific branches of *fiqh*, namely *mu'âmalât* e.g. marriage, financial transactions, and punishment. Second, before Ibn Ashur, the theory of *maqâshid* was restricted to the legalistic aspects of Islam. But he sought to broaden its scope by regarding the theory as a gateway to understanding the human nature and by extension, understanding the social order. Third, Ibn Ashur did tacitly approve the classical enumeration of *maqâshid* into five and utterly rejected the purported sixth one i.e. *'irdh* (honor). Nevertheless, he added two new *maqâshid*, namely freedom and equity, but without specifying their specific category among *dharûrî*, *hâjî* or *tahsînî*.

Those are some of Ibn Ashur's major contributions to the theory of *maqâshid as-syari'ah*. However, his Moroccan contemporary, Allal al-Fasi also deserves some note for his contribution to the theory of *maqâshid*. In his work *Maqâshid as-syari'ah al-Islâmiyyah wa Makârimuhâ*, he emphasized the importance of the theory as a manifestation of the *syari'ah* validity and viability among other laws. According to him, he wrote this book because of the stagnant study of *maqâshid* at that particular time. His objective therefore was to correct the way some scholars used to explain every aspect of jurisprudence in the name of *maqâshid*.⁶¹

In addition, there are two other relevant books by two contemporary scholars. Their authors were primarily concerned with the explanation of wisdoms behind every ruling of the *syari'ah*. The first one is entitled *Hikmat al-Tashrî' wa Falsafatuhu* (Wisdom and Philosophy of

⁵⁷ Ibn Ashur, *Maqâshid al-Shari'ah al-Islâmiyyah ...*, p. 165.

⁵⁸ Ibn Ashur, *Maqâshid al-Shari'ah al-Islâmiyyah ...* p. 169-170.

⁵⁹ Ibn Ashur, *Maqâshid al-Shari'ah al-Islâmiyyah ...* p. 172.

⁶⁰ El-Mesawi, "Maqâshid al-Shari'ah: An Ushûlî Doctrine or

⁶¹ Al-Fasi, *Maqâshid al-Shari'ah al-Islâmiyyah wa*

Legislation)⁶² by Ali Ahmad al-Jurjawi, a prominent Azhar scholar. In the preface, the author claimed that he wrote his book due to dearth of materials concerned with the specific rulings of the *syari'ah* based on their peculiar wisdoms. He then itemized four issues which he considered fundamental in all heavenly legislations; these include (i) cognition of Allah and His Essence, (ii) method of His worship, glorification, and gratitude, (iii) command what is good and order against what is bad, and cultivation of good virtues, (iv) legislating in order to punish the offender and make him aware of his limit in all transactions.⁶³

Written by Hamid bin Muhammad al-'Abbadi, the second book is entitled: *Min hikam as-syari'ah wa Asrârihâ* (The *Syari'ah* Wisdom and Secrets). Although no date of publication is provided, the author in his preface to the second edition of the book, mentioned that the first edition was published in 1387/ 1968, and that when its copies were exhausted, the second edition was published in the year 1393 AH.⁶⁴ By and large, both authors sought to give detailed accounts of the wisdoms behind each ruling of the *syari'ah*. Underlying secrets behind every ruling of *Shalâh*, *Shawm*, *Zakah*, and *Hajj*, and other rituals were explained by both scholars. However, the first book i.e. *Hikmat al-Tashrî' wa Falsafatuhu* is more elaborate than the second one. This is because aside covering those aspects of worship mentioned earlier the author also highlighted wisdoms behind rulings of marriage, divorce, good manner among other issues relating to human transactions, technically known as *mu'âmalât*.

It must be noted, however, that aspects covered by both scholars fall under *al-maqâshid al-juz'iyyah*. This aspect was discussed by Ibn Ashur in the third part of his book while dealing with purposes of the *syari'ah* in the realm of *mu'âmalât*.⁶⁵ However, the two books mentioned earlier appear to be more detailed than Ibn

Ashur's in terms of examples provided and explanations given.

Conclusion

The preceding paragraphs have discussed the historical evolution of the theory of *maqâshid as-syari'ah* right from the time of the companions who lived its spirit, down to the period of later scholars who systematized the theory to become what it is today. The conception of the theory was never an overnight incident; rather it is an outcome of exhaustive intellectual discussions and expositions of certain concepts which could be regarded as foundations of the theory. From a mere juristic principle subsumed under the science of *usul al-fiqh*, the theory of *maqâshid as-syari'ah* has assumed an indispensable status through the efforts of al-Shatibi and Ibn Ashur in the eighth and twentieth centuries, respectively. The theory of *maqâshid as-syari'ah* engenders fundamental principles of Islamic law which can serve as authentic bases for proper application of rules of the divine law. It should be observed that the application of various principles of *maqâshid as-syari'ah* are largely applicable more in the realm of *mu'âmalat* than in the realm of *ibadah*.

References

- Al-'Abbadi, Hamid Mohammad, *Min Hikam as-syari'ah wa Asrârihâ*, Beirut: al-Maktabah al-'ashriyyah, n.d.
- Abdul Fattâh, Muahmmad Zhâfir Kabbârah', *al-Tashrî' al-Islâmî: Nash 'atuhu wa Târîkhuhu wa Mashâdiruhu*, Beirut: Maktabah al-Rushd, 1424 /2003
- Alim, Yusuf, *al-Maqâshid al-'Âmmah li as-syari'ah al-Islâmiyyah*, Herndon: International Institute of Islamic Thought, 1415/1994.
- Ashur, Ibn, *Maqâshid as-syari'ah al-Islâmiyyah*, n.d.
- al-Hajjâj, Abû al-Hussain Muslim Ibn, *Shahîh Muslim*, ed. Mohammad Fouad Abdul-Baqi, Beirut: DârIhyâ al-Turâth al-'Arabî, n.d), vol. 3.
- Baltaji, Muhammad, *Manhaj 'Umar ibn al-Khaththâb fî al-Tashrî'*, Cairo: Dâr al-Salâm, 3rdedn., 1427/ 2006.
- Hallaq, Wael. B. , "On Inductive Corroboration, Probability and Certainty in Sunnî Legal Thought", in *Islamic Law and Jurisprudence*,

⁶² Ali Ahmad al-Jurjawi, *Hikmat al-Tashrî' wa Falsafatuhu*, ed. Khalid al-Attar, (Beirut: Dâr al-Fikr, 1418 / 1997).

⁶³ Ali Ahmad al-Jurjawi, *Hikmat al-Tashrî' wa Falsafatuhu ...*, pp. 3-5.

Hamid Mohammad Al-'Abbadi, *Min Hikam al-Shari'ah wa Asrârihâ*, (Beirut: al-Maktabah al-'ashriyyah, n.d).

⁶⁵ Ibn Ashur, *Maqâshid as-Syari'ah al-Islâmiyyah*, n.d.

- edited by N.L. Heer, Seattle and London, 1990.
- Hallaq, Wael. B. "The Primacy of the Qur'ân in Shâthibî's Legal Theory" in *Islamic Studies Presented to Charles J. Adams*, edited by W.B. Hallaq and D.P. Little, Leiden, 1991
- Hallaq, Wael B, *A History of Islamic Legal Theories*, New York: Cambridge University Press, 1997.
- al-Hasani, Isma'il, *Nazhriyyat al-Maqâshid 'inda al-Imâm Muhammad al-Tahir ibn 'Ashur*, (Herndon: International Institute of Islamic Thought, 1stedn., 1415/1995)
- al-Jurjawi, Ali Ahmad, *Hikmat al-Tashrî' wa Falsafatuhu*, Beirut: Dâr al-Fikr, 1418/1997.
- Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, Kuala Lumpur: Ilmiah Publishers, 2000.
- El-Mesawi, Mohamad El-Tahir, "From al-Shâthibî's Legal Hermeneutics to Thematic Exegesis", *Intellectual Discourse*. vol.20, no. 2, 2012
- Mohammad al-Bukhârî, *al-Shahîh*, ed. Mustafa al-Bagha, Beirut: DâribnKathîr, 1986.
- Al-Qarâfî, Shar, *hTanqîh al-Fushûl fî Ikhtishâr al-Mahshûl*, Cairo: Dâr al-Fikr, 1stedn., 1393 /1973
- Al-Raysuni, Ahmad, "al-Baith fî Maqâshid as-syari'ah: Nash'atuh wa tathawwuruh wa mustaqbaluhu", A paper presented at the seminar on Maqâshid as-syari'ah, organized by al-Furqan Islamic Heritage Foundation in London, between 1-5, March, 2005.
- Resse, W.L., *Dictionary of Philosophy and Religion*, New Jersey: Humanities Press, 1983.
- Safi, Louay, *The Foundation of Knowledge: A Comparative Study in Islamic and Western Methods of Inquiry*, Petaling Jaya: International Islamic University Malaysia & International Institute of Islamic Thought, 1996.
- Al-Shâthibî, *al-Muwâfaqât*, vol.1, p.36; Soualhi, "al-Istiqrâ' fî Manâhij al-Nazhar al-Islâm", p.60 and W.L., Resse: *Dictionary of Philosophy and Religion*, New Jersey: Humanities Press, 1983
- al-Tirmidhî, Al-Hakîm, *al-ShalâhwaMaqâshiduha*, ed. Husni Nasr Zaydan, Cairo: Dâr al-Kitâb al-'Arabî bi Mishr, n.d.
- Weiss, Bernard, "The Intention of the Law (*Maqâshid al-Sharî'a*) In Amidi's Jurisprudence", Conference Proceeding of the international conference with the theme: "Maqâshid al-Sharî'ah and Its Realization in Contemporary Societies", organized by Department. of Fiqh and Ushûl al-Fiqh in Collaboration with International Institute of Muslim Unity, International Islamic University Malaysia, 14-16, Rajab, 1427/ 8-10, August 2006.
- Yunus Soualhi, "al-Istiqrâ' fî Manâhij al-Nazhar al-Islâm: Numûzaj al-Muwâfaqât li al-Imâm al-Shâthibî" *Islâmiyyah al-Ma'rifah*, vol. 1, no. 4, (1416/1996).
- Yunus, Soualhi, "Al-Imam al-Shâthibî's Induction: From Mere Conjectures to Methodic Status", M.A. dissertation, International Islamic University Malaysia: not published, 1994.
- Yunus, Soualhi, *Al-Imam al-Shâthibî's Induction: From Mere Conjectures to Methodic Status*, not published, M.A. dissertation, International Islamic University Malaysia, 1994.
- Zahra, Muhammad Abu, *Al-Shâfi'î*, Cairo: Dâr al-Fikr al-'Arabî, 1978.

